

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0165
International Fuel Tax Agreement (IFTA)
Tax Period 2001-2003

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ISSUES

I. IFTA -Sufficiency of Documentation

Authority: IC 6-6-4.1-4; IC 6-8.1-5- 1(a), IC 6-8.1-5-1(b); IFTA R700, IFTA R1210.100; IFTA R1210.200; IFTA R1210.300.

Taxpayer protests the findings of the audit and requests a re-audit.

II. Tax Administration -Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the proposed assessment of the 10% negligence penalty.

III. Tax Administration -Interest

Authority: IC 6-8.1-10-l(a); IC 6-8.1-10-l(e).

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer is in the trucking business, using vehicles for hauling freight. Taxpayer was assessed tax as a result of an International Fuel Tax Agreement audit covering the periods of 2001 to 2003. An IFTA fuel audit was conducted and taxpayer did not provide complete records for the audit review. Chiefly, taxpayer did not maintain mileage summaries showing the unit breakdown of reported miles and the hubometers were broken frequently, making it impossible to verify any activity during the periods in question. The auditor reviewed what records were available with an assessment resulting based on those records.

Taxpayer was dissatisfied with the original audit, the demeanor of the auditor, and the amount of time the audit took. A supplemental audit was granted pursuant to a protest made by the taxpayer, which cited specific instances of error. Taxpayer was still dissatisfied, and subsequently requested a hearing. At the hearing, taxpayer presented a substitute audit, prepared

by a third party, with supporting documentation. Taxpayer then requested that the Department accept the substitute audit as correct and adjust the assessment accordingly.

I. IFTA -Sufficiency of Documentation

DISCUSSION

The Department determined that taxpayer had not reposted the proper amount of tax due under IC 6-6-4.1 -4. An IFTA audit was conducted over a period of fourteen months, and the Department requested taxpayer records under the auspices of IFTA Article VII, R700 requirements. These records were determined to be insufficient in many areas or were provided in a leisurely fashion by the taxpayer. The taxpayer did not maintain any mileage summaries, did not have any fuel summaries for 2001, and it was not possible to tie hubometer miles to the taxpayer's reported mileage figures. Consequently, an assessment resulted based on the records that were available, pursuant to IC 6-8.1-5-1(a) and IFTA R1210.200.

The Department refers to IC 6-8.1 -5-1(a), which states in relevant part:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of unpaid tax on the basis of the best information available to the department.

In addition, IFTA R1210.100 states in relevant part:

In the event that any licensee...fails to maintain records from which the licensee's true liability may be determined, the base jurisdiction shall proceed in accordance with .200.

IFTA R1210.200 then states that "[o]n the basis of the best information available to it, the base jurisdiction shall determine the tax liability of the licensee for each jurisdiction." Finally, IFTA R10.300 goes on to say that:

The base jurisdiction shall, after adding the appropriate penalties and interest, serve an assessment issued pursuant to .200.005 upon the licensee in the same manner as an audit assessment or in accordance with the laws of the base jurisdiction.

Taxpayer disagreed with the results of the original audit. He asked for a re-audit based on errors he found in the audit and his belief that the auditor was unprofessional in her handling of the audit, including the assertion that she would not consider certain records presented to her. The Department did not believe there was a compelling reason to grant the taxpayer's request for a re-audit. A supplemental audit was granted, which corrected the errors that taxpayer had pointed out.

At the hearing, taxpayer presented a substitute audit prepared by a tax professional, who looked at all of taxpayer's documents to determine how much he owed. These documents are

presumably every document in the taxpayer's possession, and were all presumably ready and available for the auditor's review. Taxpayer insists that his substitute audit was correctly determined, as the tax professional had thoroughly computed it based on every document in the taxpayer's possession. Taxpayer claims this was in contrast to the Department's auditor.

The burden of proof in an audit situation is found in IC 6-8.1-5-1(b) and IFTA R1210.300. IFTA R1210.300, in relevant part, states that:

The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive.

IC 6-8.1-5-1(b) states that:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The original audit followed the guidelines of IFTA R1330, which states that "[a]udits conducted by member jurisdictions shall be in compliance with all requirements established in the Agreement, Procedures Manual, and Audit Manual." During the audit, taxpayer had the opportunity to communicate with the auditor, supplying records and explanations for any discrepancies. However, it is taxpayer's contention that the auditor was unprofessional and would not look at certain records.

After the assessment was made, taxpayer was continually told by Audit Protest Review that specific documentation had to be provided that contradicted individual problems he had with the audit. Taxpayer's initial submissions to the Department sufficed to establish a lower assessment. Taxpayer was still displeased with the supplemental audit, but had not presented any further evidence which pointed to errors in the audit. Once the final assessment was made in the supplemental audit, and the taxpayer filed a protest, the matter of the audit was closed. It was then handed over to the Legal Division, whose responsibility it is to preside over hearings and resolve any protested issues. It is the taxpayer's responsibility after the audit to provide evidence that the assessment was incorrect. It was only at the hearing when taxpayer presented his substitute audit.

Taxpayer's substitute audit does not address the Department's supplemental audit directly. It is an entirely new document with its own computations and conclusions. Taxpayer does not cite to -nor is there -a requirement for the Department to accept an alternative audit conducted and prepared by an outside source not employed by the Department. The Department also notes that the original audit worked from the starting point of taxpayer's original filings for IFTA, as well as the documentation available at taxpayer's office -which taxpayer brought with him as supporting documentation of the substitute audit.

Additionally, taxpayer's audit cites to five specific instances of supposed errors in the

supplemental audit. Whether these instances were pointed out as proof of an overall pattern of error throughout the audit, or were mentioned so that specific alterations would be made was not made clear during the hearing. The instances by themselves -assuming *arguendo* that they are indeed errors -would provide *de minimis* changes to the overall assessment. The purported errors are also inconclusive evidence of an overall pattern of error sufficient to establish that yet another audit should be conducted.

As to taxpayer's argument that the original auditor acted in an unprofessional manner, taxpayer cites to no specific instances which would warrant discarding the audit results.

Since the substitute audit by an outside source is not an acceptable procedure by the Department, and the five instances presented by the taxpayer make an insignificant difference to the overall assessment, taxpayer has not met his burden of proof, and the final assessment made in the supplemental audit must stand.

FINDING

Taxpayer's protest is respectfully denied.

11. Tax Administration -Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) goes on to say that:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining

reasonable cause include, but are not limited. to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case. The taxpayer's failure to maintain adequate records establish that he was negligent, and thus his protest of the ten percent penalty is denied.

FINDING

Taxpayer's protest is denied.

III. Tax Administration -Interest

DISCUSSION

Taxpayer protests the interest assessed and argues that although he signed Agreements to Extension of Time, and there is technically no time limit for an audit can take, the interest should be waived because the audit process took too long.

Taxpayers who fail to file a return, to pay taxes, or who "incurs a deficiency upon a determination by the department," are subject to interest on the nonpayment. IC 6-8.1-10-1(a). Interest continues to accrue until final payment is made. IC 6-8.1-10-1(e) does not allow the waiver of interest by statute.

Taxpayer has not provided any documentation in support of its protest of the imposition of interest and the Department may not waive interest under IC 6-8.1-10-1(e). As such, the Department finds the assessment of interest proper and denies the interest protest.

FINDING

The taxpayer's interest protest is denied.